84-1875

Office - Supreme Court, U.S.
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JAN 24 1985
ALEXANDER L. STEVAS,
CLERK

DOCKET NO:

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1984

JOHN ALFRED JETT, SR.,
PETITIONER

VERSUS

KATERINE BRIDGES JETT,
RESPONDENT

PETITION FOR WRIT OF CERTIORARI FROM

THE TWENTY-FIRST JUDICIAL DISTRICT COURT,

PARISH OF TANGIPAHOA, STATE OF LOUISIANA.

J. R. SCHMIDT
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BY: J. R. SCHMIDT
AND: CORBETT L. OURSO, JR.

45pp

MAY IT PLEASE THE COURT

QUESTIONS FOR REVIEW

Petitioner herein asks this Honorable Court to review the following questions:

1. Did Public Law 97-252 Title X, "Uniform Services Former Spouses Protection Act" legislatively overrule the decision of the Supreme Court of the United States in McCarty v. McCarty, 435 U.S. 210,101 S.Ct. 2728, 68 L.Ed.2d 589 (1981)?
2. If so, does Public Law 97-252 have retroactive effect and to what point in time?
3. Does the McCarty decision still have an effect on property disputes involving military retirement pay filed prior to the rendering of that decision but being finally adjudicated thereafter?

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Public Law 97-252, Title X, Section 1002(A),
September 2, 1982, 96 Stat. 730, effective
February 1, 1983. . .2,3,4,7,15,17,19,20,21,25,33

10 U.S.C.A., Section 1408(c)(1). 15,21

CITATION OF OFFICIAL OPINION OF THE COURTS BELOW

Jett v. Jett, 458 So.2d 473 (La. 1984).

Jett v. Jett, 449 So.2d 557 (La. App. 1st Cir., 1984), rehearing denied.

STATEMENT OF THE JURISDICTION

This application for review stems from a decision of the Supreme Court of Louisiana, dated October 26, 1984, denying appellants application for writ of review. Jett v. Jett, 458 So.2d 473 (La. 1984). That application was a request to review the decision of the First Ciruit Court of Appeal for the State of Louisiana found in 449 So.2d 557 (1984). In that decision, the Louisiana First Circuit Court of Appeal upheld the trial court's decision in case numbers 58256-D and 60141-B of the Twenty-First Judicial District Court, Parish of Tangipahoa, Louisiana. Notice of Appeal was mailed to the Twenty-First Judicial District Court for filing on January 24, 1985 (See Appendix E).

Having exhausted all state court remedies, [1]

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1. Louisiana Code of Civil Procedure Article 2167: "Within fourteen days of the mailing of the notice of

appellant now makes this Application for Writ of Certiorari to the Supreme Court of the United States under the authority of 28 U.S.C.A. Section 1257 (3). At issue in this case is appellant's right to full ownership of his military retirement pay as guaranteed by the United States Statutes, more specifically 10 U.S.C.A. Sections 1201 et.seq. The Enactment of Public Law 97-252, Title X, Section 1002(A), September 8, 1982, 96 Statute 730.

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judgment in the supreme court, a party may apply to the court for a rehearing.

"A judgment of the supreme court becomes final and definite when the delay for application for rehearing has expired and no timely application therefor has been made.

"When an application for rehearing has been applied for timely, a judgment of the supreme court becomes final and definitive when the application is denied. The supreme court may stay the execution of the judgment pending a timely application for certiorari or an appeal to the United States Supreme Court."

APPLICABLE STATUTES

1. Public Law 97-252, Title X, Section 1002(A), September 8, 1982, 96 Stat. 730, 10, effective February 1, 1983. (See Appendix A)

STATEMENT OF THE CASE

A Petition for Separation from Bed and Board was filed in the matter of "KATHERINE BRIDGES JETT vs JOHN ALFRED JETT, SR." number 58256 on the docket of the Twenty-First Judicial District Court, Tangipahoa Parish, Louisiana on January 14, 1980. On March 28, 1980, judgment was rendered in that suit granting the separation as sought.

A document entitled "Petition for Partition by Licitation and Settlement of Community" was filed under the caption "KATHERINE BRIDGES JETT vs JOHN ALFRED JETT, SR.", number 60141 on the docket of the Twenty-First Judicial District Court, Tangipahoa Parish, Louisiana on August 26, 1980. Among the items requested to be partitioned in that action was the United States Air Force retirement pension of Petitioner, JOHN ALFRED JETT, SR.

The Supreme Court of the Untied States decided the case of McCarty v. McCarty, [2] on June 26, 1981. In the majority opinion thereof, Justice Blackmun wrote, "Federal Law precludes a State Court from dividing military retired pay pursuant to State Community Property Laws." [3]

Public Law 97-252 Title X "Uniform Services Former Spouses Protection Act", as passed by the United States Congress, became law on September 8, 1982. It set forth in pertinent part, the following:

> "Subject to the limitations of this Section, a court may treat disposable, retired or retainer pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court."

On February 11, 1983, a judgment was rendered in the Petition for Partition by Licitation and Settlement of Community granting the respondent

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2. 435 U.S. 210,101 S.Ct. 2728, 68 L.Ed. 2d 589 (1981)

3. Id. at page 2730.

herein half of the United States Air Force retirement pension of the Petitioner. This Petition was filed in advance of McCarty and the enactment of Public Law 97-252 on August 26, 1980.

Petitioner was retired and receiving his military retirement pay at the time of the filing of the Petition for Separation From Bed and Board on January 14, 1980, in which the Judgment of Separation was rendered on March 28, 1980. A Judgment of Divorce was rendered January 6, 1983 and was based on no reconciliation between the spouses subsequent to the filing of the Petition and Judgment of Separation From Bed and Board.

On appeal from this Judgment, the Court of Appeal, First Circuit for the State of Louisiana, affirmed the judgment of the trial court. [4] A subsequent Application for Rehearing to that Court of Appeal was denied without reasons. [5] A timely Application for Writ of Review to the Supreme Court

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4. 449 So.2d 557 (La. App. 1st Cir., 1984), rehearing denied.

5. See Appendix B.

of Louisiana was denied, also without assigning reasons. [6] Having received this adverse ruling from the highest judicial authority in the State of Louisiana, Petitioner makes this timely application for Writ of Certiorari to the Supreme Court of the United States. [7]

THE FEDERAL QUESTON WAS RAISED

In his reasons for judgement, the trial judge said:

> "When this suit was filed by the plaintiff, Mrs. Jett, [sic] had a right to be declared owner of one-half of the military pension of the defendant. During the time the case was on the docket the Supreme Court of the United States decided the McCarty case which prohibited state courts from considering military retired pay as marital property according to their own domestic relations law. While the case was under consideration, Congress passed Public Law 97-252 which makes military pensions community property in community property states. Therefore, this Court has no choice but to declare the military pension of Mr. Jett as community property and will

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6. 458 So 2d 473 (La. 1984); See Appendix C; Note that Justices Calogero and Dennis would have granted the writ.

7. 28 U.S.C.A., Section 1257.

sign a judgment accordingly ordering the appropriate United States Government Agency to pay one-half the pension to Mrs. Jett." [8]

The first three sentences of this quotation raised the questions involved in this case as to the interpretation of the decision of the Supreme Court of the United States in McCarty v. McCarty, [9] and the applicability of Public Law 97-252 insofar as state community property laws are concerned.

The determination of the trial judge in effect ignores the McCarty decision by holding that prior to the McCarty ruling, military retirement pay was subject to state community property laws and not preempted by federal law.

In addition, the trial court incorrectly interpreted Public Law 97-252 as legislatively overruling McCarty entirely, even prior to the effective date of the act.

In conclusion, the questions to be reviewed herein were raised at the trial court level through

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8. See Appendix D.

9. 435 U.S. 210,101 S.Ct. 2728, 68 L.Ed. 2d 589 (1981)

its incorrect interpretation and application of the law and jurisprudence as defined by the Supreme Court of the United States in McCarty and of the effect of the Congressional enactment of Public Law 97-252.

REASONS FOR REVIEW

Petitioner, JOHN ALFRED JETT, SR., submits that the trial court erred in holding and the Court of Appeal erred in affirming that KATHERINE BRIDGES JETT had the right to be declared owner of one-half (1/2) of the military pension of JOHN ALFRED JETT, SR. at the time the suit for Separation From Bed and Board was filed and therefore entitled her to such an award at the time the Judgment for Partition of the Community Property was rendered. The Supreme Court of Louisiana, with two dissenting justices, denied Petitioner's Application for for Writ of Review thereby exhausting all state court remedies.

The peculiar timing of events as set forth in the Statement of the Case, Supra, gives rise to the questions for review herein. Louisiana is and has always been a community property state. [10] The

10. Louisiana Civil Code Article 2326: "A matrimonial regime may be legal, contractual, or

partly legal and partly contractual."

Louisiana Civil Code Article 2327: "The legal regime is the community of acquets and gains established in Chapter 2 of this Title."

Louisiana Civil Code Article 2334: "The legal regime of community of acquets and gains applies to spouses domiciled in this state, regardless of their domicile at the time of marriage or the place of celebration of the marriage."

Louisiana Civil Code Artice 2336: "Each spouse owns a present undivided one-half interest in the community property. Nevertheless, neither the community nor things of the community may be judicially partitioned prior to the termination of the regime.

"During the existence of the community property regime, the spouses may, without court approval, voluntarily partition the community property in whole or in part. In such a case, the things that each spouse acquires are separate property. The partition is effective toward third persons when filed for registry in the manner provided by Article 2332."

terminated upon separation from bed and board, [11]

Louisiana Civil Code Article 2338: "The community property comprises: property acquired during the existence of the legal regime through the effort, skill or industry of either spouse; property acquired with community things or with community and separate things, unless classified as separate property under Article 2341; property donated to the spouses jointly; natural and civil fruits of community property; damages awarded for loss or injury to a thing belonging to the community; and all other property not classified by law as separate property."

Louisiana Civil Code Article 2340: "Things in the possession of a spouse during the existence of a regime of community of acquets and gains are presumed to be community, but either spouse may prove that they are separate property."

11. Louisiana Civil Code Article 2356: "The legal regime of community property terminates by the death of a spouse or by a judgment of divorce, separation from bed and board, or separation of property."

such termination being retroactive to the date of the filing of the Petition for Separation. [12]

The filing of a Petition for Separation therefore signals the time from which the spouses begin to acquire things as separate property if a Judgment of Separation is subsequently rendered

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12. Louisiana Civil Code Article 155: "The judgment of separation from bed and board carries with it the separation of goods and effects and is retroactive to the date on which the original petition was filed in the action in which the judgment is rendered, but such retroactive effect shall be without prejudice (a) to the liability of the community for the attorney fees and costs incurred by the spouses in the action in which the judgment is rendered, or (b) to the rights validly acquired in the interim between commencement of the action and recordation of the judgment. Upon reconciliation of the spouses, the community may be re-established by matrimonial agreement, as of the date of filing of the original petition in the action in which the judgment was rendered."

therein. Prior to that time, things acquired as separate property remain separate property and things acquired as community property remain community property.

Although co-owners may hold property in common, in Louisiana they may force a partition at any time they wish to no longer remain co-owners. [13] Hence, a Petition for Partition and Settlement of Community Property, though not mandatory, can be brought at any time after a Judgment of Separation or Divorce by a former spouse to divide what was acquired during the existence of the community regime as community property. Such a suit has no effect on separate property acquired prior to, during or after the marriage. In no case does it change the classification of property as it stood as of the date of the filing of the Petition for Separation.

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13. Louisiana Civil Code Article 1308: "The action of partition will not only lie between co-heirs and co-legatees, but between all persons who hold property in common, from whatever cause they may hold in common."

While family and property matters are almost exclusively matters left for states to decide, the preceeding background is necessary for a proper understanding of the questions at issue. It is a matter for Louisiana Courts and the Louisiana Legislature to determine whether or not property in Louisiana will become community or separate and when such property will be designated as taking either form. However, such action must be taken within the limits of the United States and Louisiana Constitutions as well as only in the absence of a federal preemption. At issue to be reviewed here is the question of whether the Louisiana Courts overstepped their bounds in determining property rights by incorrectly interpreting Federal Law and the jurisprudence of the Supreme Court of the United States.

The holding of the trial court that the military pension of Mr. Jett is community property, and thereby entitling Mrs. Jett to one-half (1/2) of the pension, has the effect of divesting substantive vested rights of Mr. Jett. The classification of the assets of the community property existing between the

Jetts should have resolved themselves with some permanency as of the date of the filing of the Petition for Separation on January 14, 1980 as a final Judgment was timely rendered. Prior to the decision of the Supreme Court of the United States in McCarty v. McCarty, [14] the Supreme Court of Louisiana had not addressed the issue of classification of military retirement pay. However, the state appellate courts were split on the issue. [15]

After the McCarty decision, the Louisiana cases were brought in line with the opinion of the Supreme Court of the United States. [16] As can be seen from

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14. 435 U.S. 210,101 S.Ct. 2728, 68 L.Ed.2d 589 (1981).

15. Dedon v. Dedon, 390 So.2d 937 (La. App. 2d Cir., 1980), Swope v. Mitchell, 324 So.2d 461 (La. App. 3d Cir., 1975), Rogers v. Rogers, 401 So.2d 406 (La. App. 1st Cir., 1981).

16. Dedon v. Dedon consolidated with Norsworthy v. Norsworthy, 404 So.2d 904 (La. 1981), Rogers v. Rogers 408 So.2d 359 (La. App. 1st Cir., 1981).

its original opinion, the Louisiana First Circuit Court of Appeal in Rogers v. Rogers, [17] (the same circuit which decided the instant case below) held military pension pay as community property prior to the McCarty decision. This is the same period of time when the community property regime of the Jetts ended and property rights vested with the parties. Accordingly, if the community property would have been partitioned at that time the Louisiana First Circuit Court of Appeal would probably have incorrectly determined that the military retirement pay of Mr. Jett was community property. The correct decision under McCarty would have been to declare Mr. Jett's military retirement pay as separate property. Rogers, on remand subsequent to McCarty, was reversed and the property declared separate. [18]

There is confusion in the Louisiana Courts because of Public Law 97-252, Title X, Section 1002(a), 10 U.S.C.A., Section 1408 (c)(1). [19] In

17. 401 So.2d 406 (La. App. 1st Cir., 1981).

18. 408 So.2d 359 (La. App. 1st Cir., 1981).

19. See Appendix A.

its opinion, the Louisiana First Circuit Court of Appeal said,

> "Among other things this act provided that a court may treat military retirement pay either as property solely of the retired member, or as property of the member and his spouse in accordance with applicable state law. This law legislatively overruled McCarty. Thus, McCarty was controlling for only a brief period beginning after the community was dissolved by the filing of the suit for separation and ending before the judgment partitioning the community was rendered on January 6, 1983.
>
> "In the very recent case of Rohring v. Rohring, 441 So.2d 485 (La. App. 2nd Cir., 1983), the court discussed the McCarty holding in light of the above Congressional enactment and concluded that a court is permitted to treat military retirement pay in accordance with applicable state law, and that in Louisiana military retirement pay is community property. We agree that the former conclusion is mandated by the Congressional enactment and the latter by Louisiana jurisprudence." [Citations Omitted]. [20]

That statement is not entirely accurate. It is obvious that Congress did not intend to overrule McCarty. To do so would cause the unconstitutional effect of impairing vested substantive rights. That however, is not how the law has been interpreted.

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20. 449 So.2d 557, at page 558.

McCarty was simply an interpretation of the federal law as it stood prior to and as of the date of its decision. It is only from June 25, 1981 that because the law was changed, state courts were not preempted from declaring military retirement pay to be community property. Additionally, one must question whether Congress can validly give a law such as Public Law 97-252 retroactive effect without violating the requirements of due process.

The Petition for Separation from Bed and Board was filed in this case at a time when the courts of Louisiana were preempted by federal law from declaring military retirement pay to be community property. Therefore, at the time of the filing of the Petition for Separation from Bed and Board, Mr. Jett's military retirement pay was his separate property and it could not have been classified as community property. Since Louisiana Civil Code Article 155 [21] has the effect of vesting all property rights of a married couple as of the date of the filing of a suit for Separation from Bed and

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21. Infra at Footnote 12.

Board, Mr. Jett's military retirement pay cannot now be held to have been community property, even though the federal preemption existing at the time the Jetts filed for separation no longer exists. In other words, if the Petition for Separation from Bed and Board had been filed after the McCarty decision there would have been nothing to prevent the State of Louisiana from declaring the military retirement pay to be community property but, because the Petition for Separation from Bed and Board was filed before the McCarty decision and a federal preemption existed, Mr. Jett's military retirement pay was his separate property.[22] His rights vested at the time the Petition for Separation from Bed and Board was filed and cannot be altered by a subsequent change in the law. To do otherwise would do violence to the principal of due process.

It is necessary for this Honorable Court to determine if its decision in McCarty is to have no effect -- past or future. A clarification of McCarty

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22. Note the Judgment of Separation from Bed and Board was final before McCarty.

in conjunction with Public Law 97-252 is needed so that the state court can correctly decide the classification of the property in question. This Honorable Court is not being asked to overturn any state court decisions which declared military retirement pay to be community property prior to McCarty. The problem at hand is that no final judgment existed prior to McCarty in this case, so, although Mr. Jett's right to his military retirement pay as separate property had vested, there had been no judicial affirmation of these property rights before a clarification of the law. A decision on this matter would have a nationwide effect on people divorced prior to June 25, 1981, who have yet to have their community property divided. Obviously, a substantial amount of money is at issue.

Military retirees could have to make an accounting for pay received between the date they separated from their spouses and the date of a formal property settlement (voluntary or judicial) if the separation predates Public Law 97-252 and that law is held to mean that military retirement pay has always been subject to the community property laws of

individual states. The same problem would arise in estate proceedings when the deceased was separated from his spouse prior to the effective date of the Act, but did not settle the community property accumulated during the marriage. The heirs would then have to make the same type of accounting for the retirement back-pay before the estate could be settled if McCarty is given no effect prior to Public Law 97-252.

A Congressional enactment should not preempt due process requirements. The creation of order is sought through decision of this Honorable Court.

Respectfully submitted,
J. R. SCHMIDT,
A Professional Law Corporation

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APPENDIX A

10 U.S.C.A. §1408. Payment of retired or retainer pay in compliance with court orders. . .

(c) (1) Subject to the limitations of this section, a court may treat disposable retired or retainer pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiciton of such court. . . .

Added Pub. L. 97-252, Title X, § 1002(a), Sept. 8, 1982, 96 Stat. 730.

APPENDIX B

COURT OF APPEAL, FIRST CIRCUIT,
STATE OF LOUISIANA

KATHERINE BRIDGES JETT	*	No. 83 CA 0488
	*	Parish of
VS.	*	
JOHN ALFRED JETT, SR.	*	Tangipahoa
	*	

On Application for Rehearing.
Rehearing DENIED

Baton Rouge, Louisiana May 21, 1984, 1984

S/MORRIS J. LOTTINGER
LOTTINGER, J.

S/ WALLACE A. EDWARDS
EDWARDS, J.

S/J. LOUIS WATKINS, JR.
WATKINS, J.

FILED MAY 21, ____, 1984

S/ STANLEY P. LEMOINE
STANLEY P. LEMOINE,
CLERK

I HEREBY CERTIFY THIS
DOCUMENT WAS MAILED TO: J. R. Schmidt &
Joseph H. Simpson, Attys.
THIS DATE MAY 21, 1984
S/ KAREN WEST
Dy.

APPENDIX C

The Supreme Court of the State of Louisiana

KATHERINE BRIDGES JETT NO. 84-C-1174

VS.

JOHN ALFRED JETT, SR.

IN RE: KATHERINE BRIDGES JETT applying for Writ of Review, to the First Circuit Court of Appeal, No. 83-CA-0488, from the Twenty-First District Court, Parish of Tangipahoa, No. 58,256-D and 60141, Section "B".

October 26, 1984

Denied.

JCW

JAD

WFM

FAB

HTL

CALOGERO & DENNIS, J.J., would grant the writ.

Supreme Court of Louisiana

October 26, 1984

S/ FRANS LA BRANCHE, JR.
Clerk of Court
For the Court

APPENDIX D

TWENTY FIRST JUDICIAL DISTRICT COURT

PARISH OF TANGIPAHOA

STATE OF LOUISIANA

NO. 58,256 DIV.-B

JOHN ALFRED JETT, SR.

VERSUS

KATHERINE BRIDGES JETT

FILED: February 11, 1983 S/Charlotte Hill
Dy. Clerk of Court

FINDINGS OF FACTS AND REASONS FOR JUDGMENT

This is a community property case and there are two unusual problems. The wife has continued to live in the matrimonial domicile for approximately two years, and the husband is retired from the military. The wife claims credit for payments made. The husband wishes to be reimbursed for rent, and the wife asks the Court to declare her owner of one-half of the military pension of the husband.

In the case Michael v. Michael, 415 So.2d 229, the Court held that the wife was entitled to full reimbursement for principal and interest payments made by her on home mortgage indebtedness during her

residence there subject to party separation. In this case the wife had lived in the community home. The Court used the word, "full" reimbursement. The Court also referred to the Kennedy case, 391 So.2d 1193, which held the same and which held that the husband's remedy was to bring a partition suit. Further, a co-owner has the right to use common property without the obligation to pay rent, Arcemont v. Arcemont, 162 So.2d 813.

When this suit was filed the plaintiff, Mrs. Jett, had a right to be declared owner of one-half of the military pension of the defendant. During the time the case was on the docket the Supreme Court of the United States decided the McCarty case which prohibited state courts from considering military retired pay as marital property according to their own domestic relations law. While the case was under consideration, Congress passed Public Law 97-252 which makes military pensions community property in community property states.

Therefore, this Court has no choice but to declare the military pension of Mr. Jett as community property and will sign a judgment accordingly

ordering the appropriate United States Government Agency to pay one-half the pension to Mrs. Jett.

Under R.S. 9:2801, Act No. 439 of the 1982 Legislature this Court has the power to divide the community assets and liabilities so that each spouse receives property of an equal net value. This is impossible in this case. The only real asset is the house and the furniture and the Court cannot divide a house which is subject to a mortgage. Under the Act, Section (d), the Court can order a private sale of the home. In view of the fact that the parties may work out this matter, the Court is not going to order a Sheriff's Sale of the home and furniture at this time. The Court will sign a final Judgment in the matter decreeing the litigants to be owners of the home and furniture equally, subject to the mortgage. At a later date either party can, by motion, re-open the case to force a Sheriff's Sale if there is no other remedy.

The Court will sign a judgment giving Mrs. Jett credit for payments to Troy & Nichols, beginning January 25, 1980 in the amount of $287.60 through December payment of 1980, beginning January 1, 1981

payments in the amount of $291.46 through December of 1981, and in January of 1982, $294.12 through the remainder of the year and one payment for $298.00 in January, 1983; for a total of $10,776.16.

S/ GORDON E. CAUSEY
JUDGE

Amite, Louisiana
February 10, 1983

APPENDIX E

TWENTY-FIRST JUDICIAL DISTRICT COURT

PARISH OF TANGIPAHOA

STATE OF LOUISIANA

KATHERINE BRIDGES JETT

VS NO. 58256-D

JOHN ALFRED JETT, SR.

SUPREME COURT OF LOUSISIANA

DOCKET NUMBER 84-C-1174

FIRST CIRCUIT COURT OF APPEAL

NUMBER 83-CA-0488

FILED: Jan. 25, 1985 DIV. Earnestine Foster
Dy. Clerk of Court

NOTICE OF INTENTION TO APPLY
FOR WRIT OF REVIEW

To the Honorable, the Supreme Court of Louisiana and KATHERINE BRIDGES JETT, Plaintiff, through JOSEPH H. SIMPSON, Attorney of Record for KATHERINE BRIDGES JETT.

Please be advised that JOHN ALFRED JETT, SR., Defendant-Appellant, will make application to the Supreme Court of the United States for Writ of Certiorari of Review of the final Judgment of the

Supreme Court of Louisiana dated October 26, 1984, in the above numbered and entitled cause, under the authority of 28 U.S.C.A., Section 1257 (3).

Signed at Hammond, Louisiana on this 24th day of January, 1985.

Respectfully submitted,
J. R. SCHMIDT
A Professional Law Corporation

BY: S/J. R. SCHMIDT
J. R. SCHMIDT
Attorney at Law
Post Office Drawer 1029
Hammond, Louisiana 70404
(504) 345-8917

CERTIFICATE OF SERVICE

I, do hereby certify that on January 24th, 1985, I mailed a copy of the foregoing notice to Mr. Joseph H. Simpson, Attorney of Record for Plaintiff and Appellee, KATHERINE BRIDGES JETT, postage prepaid, addressed to him at Post Office Box 1017, Amite, Louisiana 70422 and also mailed copy of same to the Supreme Court of Louisiana postage prepaid, addressed to the clerk of said court at its domicile, 301 Loyola Avenue, Room 220, New Orleans, Louisiana 70112, and the Court of Appeal, First Circuit, State of Louisiana, postage prepaid, addressed to the clerk of said court at its domicile, Post Office Box 4408, Baton Rouge, Louisiana 70821.

Signed at Hammond, Louisiana this 24th day of January, 1985.

S/ J. R. SCHMIDT
J. R. SCHMIDT

APPENDIX F

KATHERINE BRIDGES JETT — STATE OF LOUISIANA

COURT OF APPEAL

VERSUS — FIRST CIRCUIT

JOHN ALFRED JETT, SR. — NO. 83 CA 0488

ON APPEAL FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT, PARISH OF TANGIPAHOA (NO. 58256), HONORABLE GORDON E. CAUSEY, JUDGE PRESIDING

BEFORE: LOTTINGER, EDWARDS AND WATKINS, JJ.

WATKINS, J. — April 3, 1984

The husband-appellant appeals from a decision of the trial court awarding the wife-appellee fifty percent of the husband's military retirement benefits.

The facts found in the record which are relevant to this appeal are as follows: Katherine Bridges and John Jett, Sr. were married on January 2, 1956. On January 14, 1980, Mrs. Jett filed a petition for separation and was awarded a judgment on March 28, 1980. The spouses were declared to be co-owners in indivision of all community property. Later, on August 26, 1980, a petition for the settlement of the

community was filed and on January 6, 1983, the husband filed a suit for divorce which was granted the same day. Subsequently, on February 14, 1983, the trial court issued a judgment partitioning the community property. In this judgment, the trial judge ruled that the wife was entitled to receive fifty percent of the husband's military retirement benefits. It is from this judgment that the husband appeals.

The husband grounds his position on the holding of the United States Supreme Court in McCarty v. McCarty, 453 U.S. 210, 101 S.Ct. 2728, 68 L.Ed.2d 589 (1981), which was decided after the filing by Mrs. Jett of her petition for separation on January 14, 1980. In McCarty, the Supreme Court held that the federal scheme of military retirement benefits pre-empts state community property law, and that the federal law precludes a state court from dividing military retirement benefits pursuant to state community property laws. The McCarty case was cited as controlling by our Supreme Court in Dedon v. Dedon, 404 So.2d 904 (La. 1981).

Subsequent to the McCarty decision, and before the

disposition of this case at the trial level, the United States Congress enacted Public Law 97-252, Title X, Section 1002(a), 10 U.S.C.A., Section 1408 (c)(1), effective February 1, 1983. Among other things, this act provided that a court may treat military retirement pay either as property solely of the retired member, or as property of the member and his spouse in accordance with applicable state law. This law legislatively overruled McCarty. Thus, McCarty was controlling for only a brief period beginning after the community was dissolved by the filing of the suit for separation and ending before the judgment partitioning the community was rendered on January 6, 1983.

In the very recent case of Rohring v. Rohring, 441 So.2d 485 (La. App. 2d Cir. 1983), the court discussed the McCarty holding in light of the above Congressional enactment and concluded that a court is permitted to treat military retirement pay in accordance with applicable state law, and that in Louisiana military retirement pay is community property. We agree the former conclusion is mandated by the Congressional enactment and the latter by

Louisiana jurisprudence. Sims v. Sims, 358 So.2d 919 (La. 1978); T. L. James & Co., Inc. v. Montgomery, 332 So.2d 834 (La. 1976); Rasbury v. Baudier, 410 So.2d 262 (La. App. 4th Cir. 1982); Rogers v. Rogers, 401 So.2d 406 (La. App. 1st Cir. 1981), on remand 408 So.2d 359; Dedon v. Dedon, 390 So.2d 937 (La. App. 2d Cir. 1980), affirmed 404 So.2d 904 (La. 1981); Swope v. Mitchell, 324 So.2d 461 (La. App. 3d Cir. 1975). Thus, the husband's retirement pay was community property at the time the suit for separation was filed, and at the time the judgment awarding the wife fifty percent of the benefits was rendered, as we have stated.

Because we find no error in the decision of the trial judge, we affirm the decision below at appellant's cost.

AFFIRMED.

FORMAL APPEARANCE OF COUNSEL OF RECORD

TO THE HONORABLE, THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

In compliance with Rule 12.3 of the Rules of the Supreme Court of the United States adopted April 14, 1980 and effective on June 30, 1980, as revised November 21, 1980, formal appearance is hereby made by J. R. SCHMIDT, as attorney and counselor of record for petitioner, JOHN ALFRED JETT, SR.

Respectfully submitted,
J. R. SCHMIDT
A Professional Law Corporation

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CERTIFICATE OF SERVICE

I, J. R. SCHMIDT, Attorney of Record for Petitioner, JOHN ALFRED JETT, SR., do hereby certify that on February 21, 1985, I mailed three copies of the foregoing Petition for Writ of Certiorari to Mr. Joseph H. Simpson, Attorney of Record for respondent, KATHERINE BRIDGES JETT, postage prepaid, addressed to him at Post Office Box 1017, Amite, Louisiana 70422.

Signed at Hammond, Louisiana this 21th day of February, 1985.

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